

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 IO-13 ISO-00 CIAE-00 COME-00 DODE-00

DOT-00 FMC-01 INR-07 NSAE-00 SAL-01 CG-00 DLOS-06

OES-06 TRSE-00 L-03 XMB-02 OMB-01 SSO-00 INRE-00 /060 W

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FM AMEMBASSY ROME

TO SECSTATE WASHDC IMMEDIATE 9416

INFO USMISSION EC BRUSSELS

USMISSION GENEVA

AMCONSUL MILAN

AMCONSUL NAPLES

USMISSION OECD PARIS

AMCONSUL FLORENCE UNN

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PASS TREASURY AND COMMERCE

E.O. 11652: N/A

TAGS: EFIN, IT

SUBJECT: PRIOR DEPOSIT AND SHIPPING LINES

REF: A. STATE 198900; B. ROME 9799

SUMMARY. EMBASSY HAS MADE FURTHER DEMARCHE WITH
FOREIGN MINISTRY, HELD MEETING WITH REPRESENTATIVES
OF AMERICAN SHIPPING LINES IN ITALY AND DISCUSSED
AT LENGTH TECHNICAL QUESTIONS WITH FOREIGN TRADE
MINISTRY AND ITALIAN EXCHANGE OFFICE OFFICIALS
REGARDING DISCRIMINATORY ASPECT OF PRIOR DEPOSIT
SYSTEM. CONCLUSION REGARDING THIS COMPLEX MATTER
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IS THAT, TO EXTENT "DISCRIMINATION" EXISTS, IT IS

RESULT OF INTERACTION BETWEEN ITALIAN EXCHANGE CONTROL SYSTEM AND ITALY'S INTERNATIONAL COMMITMENTS. IN FACT, POSITION OF SHIPPING LINES NOW APPEARS TO BE NO DIFFERENT FROM THAT OF OTHER US SELLERS OF GOODS AND SERVICES TO ITALY. DEPARTMENT SHOULD WEIGH THESE AND POLITICAL FACTORS BEFORE ALLOWING WAIVER REVOCATION. REQUEST GUIDANCE. END SUMMARY.

1. LATEST EMBASSY EFFORTS. ON AUGUST 12 COMMERCIAL COUNSELOR MADE NEW DEMARCHE WITH CONS. GIUSEPPE SCALIA, DIRECTOR OF OFFICE NUMBER 1, DIRECTORATE GENERAL FOR ECONOMIC AFFAIRS, MINISTRY OF FOREIGN AFFAIRS, TO URGE THAT GOI ELIMINATE ANY DISCRIMINATORY ASPECTS OF PRIOR DEPOSIT REQUIREMENT, REITERATING THAT MARAD IS PREPARED AT THIS TIME TO REVOKE THE EXIM BANK WAIVERS IF DISCRIMINATION IS NOT REVOKED IMMEDIATE (PER REF A). DEMARCHE FOLLOWED MEETING ON AUGUST 11 WITH REPRESENTATIVES OF TWO OF FIVE AMERICAN SHIPPING LINES INVITED TO ATTEND MEETING. (THESE REPS PROMISED TO REPORT BACK TO THEIR COLLEAGUES RESULTS OF OUR TALKS.) ON AUGUST 12 TREASATT DISCUSSED AT GREAT LENGTH TECHNICAL QUESTIONS CONCERNING PRIOR DEPOSIT WITH DR. RUGGERO FIRRAO, DIRECTOR GENERAL FOR FOREIGN EXCHANGE CONTROL AT MINISTRY OF FOREIGN TRADE.

2. THE FACTUAL SITUATION. FOLLOWING ARE PRINCIPAL FACTS WHICH EMERGED FROM TALK WITH FIRRAO: (A) "AUTHORIZED ACCOUNTS IN FOREIGN EXCHANGE" (CONTI AUTORIZATI) FOR WHICH EXEMPTION FROM PRIOR DEPOSIT WAS PROVIDED ARE "CLOSED CIRCUIT" ACCOUNTS TO WHICH MAY BE CREDITED FOREIGN CURRENCY INCOME OF ITALIAN SHIPPING LINES AND FROM WHICH FOREIGN CURRENCY PAYMENTS MAY BE MADE TO MEET FOREIGN EXPENDITURES ON LINES THEMSELVES FOR SUCH PURPOSES AS REPAIRS, FUEL, SUPPLIES, ETC., (B) ORDINARY FOREIGN EXCHANGE ACCOUNTS (CONTI VALUTARI) HELD BY NON-RESIDENTS SUCH AS FOREIGN SHIPPING LINES MAY ALSO BE USED FOR THESE PURPOSES WITHOUT APPLICATION OF PRIOR LIMITED OFFICIAL USE

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DEPOSIT, (C) ITALIAN SHIPPING LINES MAY BILL THEIR CLIENTS IN DOMESTIC (NON-CONVERTIBLE) LIRE, WHILE FOREIGN SHIPPING LINES MAY NOT. THIS IS IN CONFORMITY WITH ITALY'S EXTERNAL CONVERTIBILITY COMMITMENTS TO OECD AND PERHAPS OTHER BODIES. BECAUSE OF FREE TRANSFER FEATURE OF THESE ACCOUNTS, PRIOR DEPOSIT APPLIES FOR ALL TYPES OF PAYMENTS FOR GOODS AND SERVICES THROUGH THEM. (D) THERE IS POSSIBILITY

THAT AT LEAST SOME FOREIGN SHIPPING LINES' COULD BILL
IN NON-CONVERTIBLE LIRE AND USE SUCH LIRE FOR
EXPENDITURES IN ITALY.

3. EVALUATION. EMBASSY REGRETS THAT MISUNDERSTANDING
OF NATURE AND USES OF "AUTHORIZED ACCOUNTS" LED TO
ERRONEOUS INTERPRETATION THAT EXEMPTION FROM PRIOR
DEPOSIT REQUIREMENT FOR TRANSFERS FROM THESE ACCOUNTS
CREATED DISCRIMINATORY TREATMENT AS REGARDS FREIGHT
PAYMENTS. RATIONALE FOR GOI INCLUDING EXEMPTION IN
PRIOR DEPOSIT LAW SEEMS TO HAVE BEEN SIMPLY TO RECONFIRM
THAT FOREIGN EXCHANGE RECEIPTS FLOWING INTO THESE
"CLOSED CIRCUIT" ACCOUNTS COULD BE RE-USED FOR CERTAIN
KINDS OF EXPENDITURES BY ITALIAN RESIDENT COMPANIES
WITHOUT GIVING RISE TO PRIOR DEPOSIT REQUIREMENT.
EMBASSY RECOGNIZES THAT GOI DID GRANT EXEMPTION FROM
PRIOR DEPOSIT FOR SALE OF PASSENGER TICKETS BY AIRLINES
AND SHIPPING LINES (REF B) UNDER OUTSIDE PRESSURE,
INCLUDING PRESSURE FROM USG. THIS SEEMS TO HAVE BEEN
DONE IN MISTAKEN GOI ACCEPTANCE OF ARGUMENTS THAT
DISINCENTIVE CREATED BY PRIOR DEPOSIT WAS "DISCRIMINATORY."
WHEN JUNE AMENDMENT DECREE WAS BEING PREPARED, GOI WAS
UNDER STRONG PRESSURE FROM SPECIAL INTEREST GROUPS TO
CREATE EXEMPTIONS IN THEIR FAVOR. LATER, WHEN IT WAS
DECIDED TO EXTEND PRIOR DEPOSIT FOR 90 DAYS, GOI DID SO
WITHOUT ANY CHANGE IN PRIOR DEPOSIT ARRANGEMENTS IN
ORDER NOT TO OPEN DOOR TO FURTHER PRESSURES FOR CREATING
EXCEPTIONS FOR SPECIAL INTEREST GROUPS. IN RECENT
DISCUSSIONS WITH GOI OFFICIALS, IT IS CLEAR THAT THEY
BELIEVE THAT ANY CHANGES IN PRIOR DEPOSIT TO BENEFIT
SHIPPING LINES WOULD HAVE TO BE IMPLEMENTED BY EXECUTIVE
ACTION AND NOT THROUGH DECREE REQUIRING PARLIAMENTARY
APPROVAL. AS DISCUSSED BELOW, RESORT TO EXECUTIVE
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ACTION ALSO APPEARS TO RAISE SOME DIFFICULT PROBLEMS.
IN SUM, TO EXTENT THAT "DISCRIMINATION" EXISTS, IT
DERIVES FROM FACT THAT UNDER ITALY'S EARLIER EXCHANGE
CONTROL LAWS ITALIAN SHIPPING COMPANIES CAN LEGALLY
BILL IN NON-CONVERTIBLE LIRE AND, THEREFORE, WITHOUT
PRIOR DEPOSIT, WHILE FOREIGN LINES MAY NOT.

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PASS TREASURY AND COMMERCE

4. DURING AUGUST 11 MEETING TWO AMERICAN SHIPPING LINE
REPS SUGGESTED POSSIBILITY THAT AMERICAN LINES COULD
ESCAPE PRIOR DEPOSIT BY ACCEPTING PAYMENTS FOR
SERVICES IN NON-CONVERTIBLE LIRE AND SPENDING THESE
LIRE IN ITALY. (HOWEVER, THESE TWO REPS
WERE NOT CERTAIN THAT ALL AMERICAN LINES COULD ACCEPT
SUCH A SOLUTION AND, ON AUGUST 13, SHIPPING REP FROM
ANOTHER LINE TOLD EMBOFF THAT HIS COMPANY COULD NOT
DO SO.) IN ANY CASE, POSITION OF AMERICAN SHIPPING
LINES NOW APPEARS NOT TO DIFFER FROM THAT OF ANY OTHER
AMERICAN SELLER OF GOODS OR SERVICES TO ITALY WHO
WOULD BE WILLING TO ACCEPT NON-CONVERTIBLE LIRE. IN
OTHER WORDS, SHIPPING LINES ARE SIMPLY EXPERIENCING
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INHERENT DISINCENTIVE FOR ALL FOREIGN EXCHANGE
PAYMENTS WHICH WAS DELIVERATELY CREATED BY PRIOR DEPOSIT.

5. DURING DISCUSSION WITH DIRRAO, POSSIBILITY OF FOREIGN SHIPPING LINES' ACCEPTING PAYMENT IN NON-CONVERTIBLE LIRE WAS EXPLORED. FIRRAO SAID THAT ITALIAN EXCHANGE CONTROLS REQUIRE THAT ALL NON-RESIDENT LIRA ACCOUNTS MUST BE CONVERTIBLE LIRA ACCOUNTS IN CONFORMITY WITH ITALY'S EXTERNAL CONVERTIBILITY COMMITMENTS TO OECD (APPARENTLY ARTICLE 1-B OF OECD CODE FOR LIBERALIZATION OF CAPITAL MOVEMENTS). FOR GOI TO AUTHORIZE NON-RESIDENT SHIPPING LINES TO HOLD NON-CONVERTIBLE LIRA ACCOUNTS COULD CREATE BAD PRECEDENT AS REGARDS ITALY'S EXTERNAL CONVERTIBILITY COMMITMENTS. POSSIBILITY OF FOREIGN SHIPPING LINES' BECOMING "RESIDENTS" IN ORDER TO BE ABLE TO HOLD NON-CONVERTIBLE LIRA ACCOUNTS WAS ALSO DISCUSSED. HOWEVER, IN ORDER TO QUALIFY AS "RESIDENTS," COMPANIES WOULD HAVE TO BE LEGALLY ESTABLISHED IN ITALY AS JURIDICAL PERSONS. BESIDES CHANGING CURRENT COMMERCIAL PRACTICES OF SHIPPING COMPANIES, LEGAL ESTABLISHMENT IN ITALY COULD CHANGE THEIR TAX STATUS TO THEIR DISADVANTAGE. ON AUGUST 13 IN FURTHER DISCUSSION OF THIS QUESTION, DR. MARIO ORAZI, VICE DIRECTOR GENERAL OF ITALIAN EXCHANGE OFFICE, SAID THAT HE THOUGHT IT POSSIBLE FOR GOI, AS EXCEPTIONAL MEASURE, TO AUTHORIZE FOREIGN SHIPPING COMPANIES TO HAVE NON-CONVERTIBLE LIRA ACCOUNTS FOR LIMITED PURPOSES. HOWEVER, HE THOUGHT THAT THIS WOULD BE EXCEPTION NOT ONLY TO OECD CODE BUT ALSO TO INTENT OF ARTICLE VIII ON IMF ARTICLES OF AGREEMENT.

6. CONCLUSIONS. EMBASSY IS NOT NOW CONVINCED THAT THERE EXISTS CLEAR-CUT "DISCRIMINATORY" TREATMENT OF FOREIGN SHIPPING LINES IN DE JURE SENSE, NON THAT SHIPPING LINES ARE RECEIVING LESS FAVORABLE TREATMENT THAN OTHER AMERICAN SELLERS OF GOODS AND SERVICES (EXCEPT FOR PASSENGER TICKET EXEMPTION). ALSO, POSSIBLE METHODS OF ELIMINATING DE FACTO DISINCENTIVE --NOT NECESSARILY DISCRIMINATION--DUE TO PRIOR DEPOSIT (IF THIS CAN BE JUSTIFIED FOR SHIPPING LINES BUT NOT FOR OTHER AMERICAN EXPORTERS OF GOODS AND SERVICES) LIMITED OFFICIAL USE

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MAY EITHER BE COMMERCIALY OR FISCALLY UNDESIRABLE OR MAY RUN UP AGAINST CONFLICTING INTERNATIONAL COMMITMENTS WHICH ITALY DOES NOT WISH TO BREACH AND WHICH USG WOULD ALSO WISH TO DEFEND. THESE LEGAL ISSUES ASIDE, THERE IS FURTHER CONSIDERATION OF A MORE GENERAL NATURE WHICH, IN OUR VIEW, MUST BE WEIGHED BEFORE WAIVERS ARE REVOKED. PARAMOUNT IS FACT THAT NO OTHER COUNTRIES, TO OUR KNOWLEDGE, HAVE COMPLAINED ABOUT THIS SPECIFIC ASPECT OF PRIOR IMPORT DEPOSIT PROGRAM. OUR RETALIATING MAY WELL CREATE UNCERTAINTY AND

CONFUSION AMONG THOSE GOI POLITICAL LEADERS WHO ARE SEEKING OUR CONTINUED SUPPORT DURING PRESENT PERIOD OF POLITICAL UNCERTAINTY AND ECONOMIC DIFFICULTIES. THEY MAY MISREAD OUR SPECIFIC RETALIATION IN BROADER CONTEXT SO AS TO QUESTION OUR GENERAL SUPPORT FOR ITALY'S EFFORTS TO SOLVE ITS ECONOMIC PROBLEMS, INCLUDING OUR ACQUIESCENCE IN SEVERAL INTERNATIONAL FORA TO TEMPORARY IMPOSITION OF PRIOR DEPOSIT. THERE ARE IMPORTANT US POLITICAL INTEREST INVOLVED. EMBOFF PROMISED FIRRAO THAT EMBASSY WOULD REPORT RESULTS OF CLARIFICATION TALKS TO WASHINGTON AGENCIES. (FIRRAO WAS INSISTENT THAT GOI HAD NOT INTENDED TO APPLY PRIOR DEPOSIT IN DISCRIMINATORY WAY AND HE DID NOT BELIEVE THAT IT WAS DOING SO. FURTHERMORE, HE WAS CONVINCED THAT DEPOSIT WOULD BE REMOVED ON NOVEMBER 3.) EMBASSY SEEKS GUIDANCE AS TO WHAT, IF ANYTHING FURTHER, SHOULD BE ATTEMPTED AFTER WASHINGTON AGENCIES HAVE HAD OPPORTUNITY TO EVALUATION ABOVE INFORMATION, CONSIDER THE POLITICAL RAMIFICATIONS, AND PERHAPS DISCUSS FURTHER WITH US-BASED SHIPPING COMPANY REPS.VOLPE

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